IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 59 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH-TAX

Versus

R.P.CONTRACTOR

Appearance:

1. WEALTH TAX REFERENCE No. 59 of 1989
MR MANISH R BHATT for Petitioner No. 1
MR DD VYAS for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment years 1975-76 to 1978-79:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that only half and not the whole of the capitalised value of the interest of the assessee in the immovable properties of trust property was liable to be assessed to the wealth-tax under the provisions of Wealth-tax Act, 1957?"

2. The controversy in the present case under the provisions of the Wealth-tax Act was also raised by the revenue in respect of the income of the assessee under the Income-tax Act, 1961. The said controversy under the Income-tax Act came to be concluded by the decision of this Court in CIT vs. PP Contractor (1991) 192 ITR 261 which was also followed by this Court in another case of the assessee in (1994) 208 ITR 771. The Court held that the assessee was within his rights in executing the deed of assignment on December 6, 1951, transferring or assigning his right, title and interest in half of the income from the residuary property in favour of his children. Hence, the assessee was liable to be assessed only in respect of half of the income derived from the residuary property.

3. For delivering the order giving rise to the present reference, the Tribunal had merely followed its decision in the Income-tax Appeals and that controversy under the Income-tax Act has already been concluded in favour of the assessee, as stated above.

4. We also follow the aforesaid decisions of this Court in the case of this very assessee under the Income-tax Act. Accordingly, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-